Supreme Court, U.S.
FILED
MAR 30 1984
ALEXANDER L. STEVAS
CLERK

NO. 83-6334

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

WILLIAM HOWARD PUTMAN,

Petitioner,

v.

STATE OF GEORGIA,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Georgia

BRIEF FOR THE RESPONDENT IN OPPOSITION

WILLIAM B. HILL, JR.
Senior Assistant
Attorney General
Counsel of Record for the
Respondent.

MICHAEL J. BOWERS
Attorney General

JAMES P. GOOGE, JR.
Executive Assistant
Attorney General

MARION O. GORDON
First Assistant
Attorney General

PAULA K. SMITH
Staff Assistant
Attorney General

Please serve:

WILLIAM B. HILL, JR.
132 State Judicial Bldg.,
40 Capitol Square, S.W.
Atlanta, Georgia 30334
(404) 656-3359

QUESTIONS PRESENTED

I.

Whether this Court should grant a writ of certiorari to examine the issue of the admission at trial of a prior criminal conviction of Petitioner when an examination of the decision of the state court below makes it readily apparent that the issue of admissibilty of the prior criminal act was squarely, clearly and adequately based on non-federal grounds, i.e., the decision is based on state law.

TABLE OF CONTENTS

Page(s)

QUESTIONS PRESENTED. i

STATEMENT OF THE FACTS 1

REASON FOR NOT GRANTING THE WRIT

I. BECAUSE THE ISSUE OF THE ADMISSIBILITY OF PETITIONER'S PRIOR CONVICTION WAS SQUARELY BASED ON NON-FEDERAL GROUNDS, I.E., THE STATE COURT'S DECISION WAS BASED SOLELY ON STATE LAW, THIS COURT SHOULD NOT GRANT THE REQUESTED WRIT. 3

CONCLUSION 6

CERTIFICATE OF SERVICE 7

TABLE OF AUTHORITIES

Cases Cited: Page(s)

Berea College v. Kentucky, 211 U.S. 45 (1908) 5

Fox Film Corporation v. Muller, 296 U.S. 207 (1935) . . . 5

Herb v. Pitcairn, 324 U.S. 117 (1945) 5

Putman v. State, 251 Ga. 605, 308 S.E.2d 145 (1983). 1,4

Putnam v. State, 250 Ga. 418, 297 S.E.2d 286 (1982) 2

Zacchini v. Scripps-Howard Broadcasting Company, 433 U.S. 562 (1977) 5

Statute Cited:

O.C.G.A. § 24-2-2 3

NO. 83-6334

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

WILLIAM HOWARD PUTMAN,

Petitioner,

v.

STATE OF GEORGIA,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Georgia

BRIEF FOR THE RESPONDENT IN OPPOSITION

PART ONE

STATEMENT OF FACTS

Petitioner, William Howard Putman, was indicted in Cook County, Georgia during September 1980 for the murders of Katy Christine Back and David Norris Hardin which occurred on July 10, 1980. Following a trial by jury, Petitioner was found guilty of both murders, and the jury imposed a death sentence for each murder. The convictions and sentences were affirmed by the Supreme Court of Georgia on direct appeal. Putman v. State, 251 Ga. 605, 308 S.E.2d 145 (1983). Rehearing was denied November 8, 1983. This petition for a writ of certiorari seeks review of that judgment of the Supreme Court of Georgia affirming Petitioner's convictions and sentences.

Early on the morning of July 10, 1980, an eyewitness observed the murders of Katy Christine Back and David Norris Hardin at a reststop on Interstate 75 in Cook County, Georgia. Petitioner was subsequently arrested, tried and convicted of

these murders. When Petitioner was arrested, he had David Hardin's wallet in his truck. Petitioner's clothing was subsequently inventoried, and police found an insurance card bearing the name William G. Hodges, a wristwatch and two rings later identified as having belonged to William Hodges. Hodges' body had been discovered at approximately 2:30 p.m. on July 10, 1980, slumped over the wheel of his car in the parking lot of a truck stop in Valdosta, Lowndes County, Georgia. Ballistics tests were conducted on the .38 caliber revolver recovered from Petitioner's truck as well as the .38 caliber bullets removed from the skulls of David Hardin, Katy Back (Hardin) and William Hodges. The tests revealed that the bullets could have all been fired from Petitioner's revolver.

Before being tried for the Cook County murders, Petitioner was tried and convicted of the Lowndes County murder. Putnam v. State, 250 Ga. 418, 297 S.E.2d 286 (1982). At Petitioner's trial on the Cook County murders, evidence of the Lowndes County murder was introduced by the prosecution. It is the admission of the Lowndes County evidence that forms the basis of Petitioner's request for certiorari.

PART TWO

REASON FOR NOT GRANTING THE WRIT

I. BECAUSE THE ISSUE OF THE ADMISSIBILITY OF PETITIONER'S PRIOR CONVICTION WAS SQUARELY BASED ON NON-FEDERAL GROUNDS, I.E., THE STATE COURT'S DECISION WAS BASED SOLELY ON STATE LAW, THIS COURT SHOULD NOT GRANT THE REQUESTED WRIT.

Petitioner contends that the admission at his Cook County trial of evidence concerning a Lowndes County murder for which Petitioner had been convicted violated his rights to due process under the Fifth and Fourteenth Amendments to the Constitution of the United States. Specifically, Petitioner has contended that he has a private interest, his right to life and liberty, which will be taken by an official act under scrutiny -- his execution by the State of Georgia. Petitioner also contends that the admission of the Lowndes County evidence at the Cook County trial created an erroneous result because the jury was more likely to find Petitioner guilty of the Cook County murders and that he in effect had to defend himself against three charges of murder instead of two. The due process analysis framework in which Petitioner attempts to present a federal question to this Court was not presented to nor decided by the Supreme Court of Georgia. Rather, the Supreme Court of Georgia relied solely on state law to decide the issue of the admission of the Lowndes County murder,

The Supreme Court of Georgia noted that Petitioner had contended that the trial court erred in admitting the evidence of the Lowndes County murder, relying on O.C.G.A. § 24-2-2 which provides, "The general character of the parties and especially their conduct in other transactions irrelevant matter unless the nature of the action involves such character and renders necessary or proper the investigation of such

conduct." Putman v. State, supra. The Supreme Court of Georgia found there was no error in admitting the evidence of the Lowndes County murder. That court found as follows:

> The state proved that Putman was the perpetrator of the Lowndes County crimes. The Lowndes County crimes and the Cook County crimes were part of a continuous course of conduct, closely connected in time, place and manner of commission. Compare Walraven v. State, 250 Ga. 401(4b) (297 S.E.2d 278)(1982). The evidence, considered in its entirety, including the evidence proving the commission by Putman of the Lowndes County murder, effectively rebuts Putman's contention that what really happened was that some unknown person removed Putman's gun from his truck, used it to commit murder, and later "tossed the gun back into his tractor where it was ripe for 'finding' by officers of the law."
>
> "This presents a classic case for application of the exception: In order to prove that the defendant committed the murders . . . [in Cook County], it is necessary and proper to introduce evidence relating to the crimes . . . [in Lowndes County]. Thus, the statute not only provides no bar but in fact authorizes the introduction of the evidence." Rivers v. State, 250 Ga. 288, 297 (5) (298 S.E.2d 10)(1982). This enumeration of error is without merit.

Putman v. State, supra.

An examination of the foregoing decision readily reveals that the decision of the Supreme Court of Georgia as to the admissiblity of the Lowndes County murder has been firmly and clearly grounded upon Georgia law concerning state evidentiary matters. The state court did not address or decide Petitioner's claim on anything other than state law.

With the foregoing in mind, Respondent notes that this Court has consistently adhered to the self-imposed principle that it will not review a state court judgment based upon an adequate and independent non-federal or state ground, even though a federal question may be involved and perhaps wrongly decided. Berea College v. Kentucky, 211 U.S. 45, 53 (1908). Fox Film Corporation v. Muller, 296 U.S. 207 (1935).

> The reason is so obvious that it has rarely been thought to warrant statement. It is found in the partitioning of power between the state and federal judicial systems and in the limitations of our own jurisdiction. Our only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights. And our power is to correct wrong judgments, not to revise opinions. We are not permitted to render an advisory opinion, and if the same judgment were to be rendered by the state courts after we corrected its views of federal laws, our review would amount to nothing more than an advisory opinion.

Herb v. Pitcairn, 324 U.S. 117, 125-26 (1945); Zacchini v. Scripps-Howard Broadcasting Company, 433 U.S. 562, 566 (1977).

It is the Respondent's contention that there exists no federal question for review by this Court as to the issue raised in this case. An examination of the foregoing authorities and the decision rendered by the state court

readily reveals that the decision on the issue concerning the admission of the Lowndes County conviction sought to be reviewed in the instant application for a writ of certiorari is clearly and adequately grounded upon state law, as opposed to federal law. Accordingly, there exists no federal question for review as to this issue.

CONCLUSION

This Court should refuse to grant a writ of certiorari to the Supreme Court of Georgia, as it is manifest that there exists no federal question for review by this Court as to the issue presented.

Respectfully submitted,

William B. Hill, Jr.
WILLIAM B. HILL, JR.
Senior Assistant Attorney General
Counsel of Record for Respondent

MICHAEL J. BOWERS
Attorney General

JAMES P. GOOGE, JR.
Executive Assistant Attorney General

Marion O. Gordon
MARION O. GORDON
First Assistant Attorney General

Paula K. Smith
PAULA K. SMITH
Staff Assistant Attorney General

Please serve:

WILLIAM B. HILL, JR.
132 State Judicial Building
40 Capitol Square, S. W.
Atlanta, Georgia 30334
(404) 656-3359

CERTIFICATE OF SERVICE

I, William B. Hill, Jr., Attorney of Record for the Respondent, and a member of the Bar of the Supreme Court of the United States, hereby certify that in accordance with the Rules of the Supreme Court of the United States, I have served a copy of the foregoing Brief for Respondent in Opposition upon the Petitioner by depositing same in the United States mail with sufficient, first class postage affixed thereto, and addressed to counsel for Petitioner as follows:

Mr. C. Dane Perkins
Attorney for Petitioner
Yancey, Perkins and Barnick
Post Office Box 155
Nashville, Georgia 31639

Ms. Elsie Higgs Griner
Ms. Galen P. Alderman
Attorneys for Petitioner
Post Office Box 115
Nashville, Georgia 31639

Mr. Lew S. Barrow
District Attorney
Alapaha Judicial Circuit
Post Office Box 401
Nashville, Georgia 31639

This 29th day of March, 1984.

William B. Hill, Jr.
WILLIAM B. HILL, JR.
Senior Assistant
Attorney General